

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOINT INITIAL REPORT

Pursuant to section 1(A) of the Standing Order for the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York ("Pilot Project Standing Order"), which, by order of this Court, governs pretrial procedures in this matter, Rule 26(f) of the Federal Rules of Civil Procedure, and this Court's instructions at the December 5, 2013 hearing, counsel for the undersigned parties met and conferred on August 19, 2014 and September 11, 2014, and submit this Initial Report.

I. NATURE OF THE LITIGATION

The nature of this litigation is set forth in the Second Consolidated Amended Class Action Complaint (Dkt. 285) and this Court's September 4, 2014, Opinion and Order (Dkt. 321).

II. INITIAL DISCLOSURES

The parties will dispense with all initial disclosures described in Federal Rule of Civil Procedure 26(a)(1), with the exceptions noticed below, and in place of such disclosures, will exchange the following information:

- A. Rule 26(a)(1)(A)(i) Disclosures: Within 21 days of the entry of the Rule 16(b) scheduling order, all parties will produce to the other parties the disclosures described in Federal Rule of Civil Procedure 26(a)(1)(A)(i).

B. Initial Document Production: Within 30 days of the entry of the Rule 16(b) scheduling order, Defendants will produce (i) copies of the Civil Investigative Demands (“CIDs”) issued by the U.S. Department of Justice (“DOJ”) in connection with its investigation into credit default swaps (“CDS”), (ii) all documents dated or created on or after January 1, 2007 that were produced to the DOJ in connection with those CIDs (without prejudice to the parties’ positions as to the appropriate time period for subsequent document discovery in this action), and (iii) transcripts of all depositions taken by the DOJ in connections with those CIDs. Defendants will simultaneously disclose to Plaintiffs the following information about their production to the DOJ: (i) the custodians and search terms that were used, (ii) the timeframe covered, and (iii) the sources of the documents produced. Within 30 days of the entry of the Rule 16(b) scheduling order, Plaintiffs will produce copies of any documents received from Citadel LLC (f/k/a Citadel Investment Group, LLC) or CME Group related to the subject matter of this litigation. The parties agree that the initial document productions contemplated in this paragraph shall not constitute a waiver of any attorney client, work product, or other applicable privilege.

C. Documents Produced to the European Commission: Within 30 days of entry of the Rule 16(b) scheduling order, each Defendant will meet and confer with Plaintiffs regarding the parameters and scope of its production to the European Commission (“EC”) and any issues that may relate to the production of these materials. Within 60 days of entry of the Rule 16(b) scheduling order, the parties

will report to the Court regarding any remaining issues with regard to the production to Plaintiffs of the documents produced to the EC.

- D. Additional Disclosures: Within 45 days of the entry of the Rule 16(b) scheduling order, each Defendant (to the extent applicable) will make reasonable efforts to provide the following information: (i) for each custodian used in the DOJ production and any employee deposed in connection with the DOJ investigation, (a) the person's name; (b) the person's employer and city, state, and country of employment; (c) the person's current title, if any, with that party and any other title or position he or she had during the class period; and (d) a statement as to whether the person is currently employed by or an agent of the party and, if not, the person's last known phone number(s), address(es), and email address(es), and (ii) the names of any employees who served on (a) the boards of directors of ISDA or Markit from January 1, 2008 through December 31, 2013, and (b) the risk committees of ICE Clear or CME Clearing from January 1, 2008 through December 31, 2013.
- E. Initial Custodian Proposals: Within 30 days of the service of requests for production of documents, each party shall make a good faith proposal of the appropriate custodians for purposes of document discovery, including former and current employees. This proposal shall not bind the party making the proposal to any requirements about the manner in which the files of the proposed custodians shall be searched. For each proposed custodian, each party will make a reasonable effort to provide the following information: (i) the person's name; (ii) the person's employer and city, state, and country of employment; (iii) the

person's current title, if any, with that party and any other title or position he or she had during the class period; and (iv) a statement as to whether the person is currently employed by or an agent of the party. For those proposed custodians identified by Defendants who were also custodians for purposes of the DOJ productions, the parties agree to meet and confer in good faith regarding an appropriate method for any additional search that may be reasonably necessary in connection with those custodians in light of the search that was performed and documents that were produced from such custodians in connection with the DOJ productions.

III. FOREIGN DOCUMENTS AND WITNESSES

Within 21 days of the entry of the Rule 16(b) scheduling order, the parties will meet and confer to discuss issues related to discovery of documents and information located outside the United States and from witnesses who reside or are located outside the United States. Within 30 days of entry of the Rule 16(b) scheduling order, the parties will report to the Court regarding any remaining issues with regard to foreign documents and witnesses.

IV. DOCUMENT PRODUCTION, INCLUDING ESI

The parties have prepared a separate proposed order regarding the logistics of document discovery in the actions, which includes initial provisions for the collection and production of electronically stored information ("ESI"). See Exhibit A.

V. CONFIDENTIAL DISCOVERY MATERIALS

The parties have agreed that issues about claims of confidentiality should be governed by the proposed Protective Order, which the parties have attached hereto as Exhibit B for the Court's review and approval.

VI. DISCOVERY LIMITATIONS

- A. Identity of the Parties: For purposes of this Joint Report, the parties agree that there are 6 Plaintiffs (which are LACERA, Salix Capital, the Delta Funds, Value Recovery Fund, Essex Regional Retirement System, and the Unipension Pension Funds) and 14 Defendants (which are BofA, BNPP, Barclays, Citibank, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBS, UBS, ISDA and Markit). To the extent either Plaintiffs or Defendants determine, through the course of discovery, that affiliated Plaintiffs or Defendants should be treated as separate entities for the purposes of the discovery limitations described in this report, the parties will meet and confer in good faith regarding appropriate additional discovery for those affiliated Plaintiffs.
- B. Document Requests: Each party may serve an unlimited number of document requests to any other party(-ies).
- C. Interrogatories: Plaintiffs (collectively) may serve up to 25 interrogatories on each Defendant, and Defendants (collectively) may serve up to 25 interrogatories on each Plaintiff. Each Plaintiff, and each Defendant, may serve up to a total of 10 additional interrogatories on each Defendant, or each Plaintiff, but in no event may a total of more than 40 interrogatories be served on any party.
- D. Requests for Admission: Plaintiffs may collectively serve up to 50 requests for admission on each Defendant, and Defendants may collectively serve up to 50 requests for admission on each Plaintiff. Each Plaintiff, and each Defendant, may serve up to a total of 10 additional requests for admission on each Defendant, or

each Plaintiff, but in no event may a total of more than 75 requests for admission be served on any party. The parties must observe the limitations on length stated in section II(F) of the Pilot Project Standing Order.

- E. Consultation: Each Defendant must consult the other Defendants before serving any discovery request on a party for the purpose of ensuring that the parties do not serve unnecessarily duplicative requests.
- F. Party Fact Depositions: Plaintiffs (collectively) may notice the deposition of up to a total of 11 fact witnesses per Defendant pursuant to Federal Rule of Civil Procedure 30(b)(1) or Rule 30(b)(6). Defendants (collectively) may notice the deposition of up to a total of 6 fact witnesses per Plaintiff pursuant to Federal Rule of Civil Procedure 30(b)(1) or Rule 30(b)(6). Former employees of a party shall be deemed party fact witnesses for purposes of this provision. For 30(b)(6) depositions, each 7-hour period of deposition (whether with a single witness or multiple witnesses, and whether on a single noticed topic or multiple noticed topics) will count as one deposition against the total allotment for party fact depositions provided in this paragraph; however, designation of multiple witnesses for Rule 30(b)(6) depositions must be done in good faith.
- G. Non-Party Depositions: Plaintiffs (collectively) and Defendants (collectively) each may serve no more than four subpoena duces tecum on any particular non-party, with the total number of non-parties subpoenaed to remain unlimited. Pursuant to subpoenas ad testificandum or otherwise, Plaintiffs (collectively) may depose up to 45 non-party witnesses, and Defendants (collectively) may depose up to 45 non-party witnesses. If the identity of the particular non-party witness to

be deposed is not stated in the subpoena and the non-party offers the deposition of more than one witness in response to the subpoena, each 7-hour period of deposition (whether with a single witness or multiple witnesses, and whether on a single noticed topic or multiple noticed topics) will count as one deposition against the total allotment for non-party depositions provided in this paragraph; however, designation of multiple witnesses for Rule 30(b)(6) depositions must be done in good faith. Each party must provide the other parties with: (1) copies of any subpoenas at the time of service; (2) a written record of any oral or written modification to the subpoenas; (3) notice that the party has received any documents or data from the non-party in response to the subpoena; and (4) a copy of such documents or data, promptly upon receipt..

- H. Withdrawal of Deposition Notices: Upon giving reasonable notice, a party (including Plaintiffs collectively or Defendants collectively) may withdraw a deposition notice at any time prior to the deposition, and that deposition will not count against the party for purposes of the number of depositions allotted herein.
- I. Exceptions: The limitations on the number of discovery requests set forth under this heading ("Discovery Limitations") do not apply to (1) discovery requests made by a Plaintiff to another Plaintiff or a Defendant to another Defendant or (2) depositions of witnesses on a party's trial witness list, as described in section VII(G) below. In addition, to the extent that the parties are unable, after meeting and conferring in good faith, to resolve issues regarding (i) the authenticity of documents, (ii) the status of documents as records of a regularly conducted activity for purposes of Federal Rule of Evidence 803(6), (iii) the

foundation for a possible objection to a claim of privilege, (iv) compliance with a subpoena, or (v) the foundation for a possible motion to compel, such party may by agreement or, absent an agreement, may apply to the Court for leave to take additional depositions or serve additional requests for admission limited to such matters and, if agreed to by the parties or approved by the Court, such depositions and requests for admission will not count toward the limitations on the number of depositions and requests for admission.

- J. Rights Reserved: Nothing in this section prohibits a party or non-party from objecting to or moving to quash or modify any particular discovery request or subpoena it receives, or from seeking a protective order from the Court, on any appropriate ground, including that the discovery requests noticed to it are cumulative or unfairly burdensome. In addition, for good cause shown, any party may seek relief from the Court from the limitations set forth under this section heading (“Discovery Limitations”).

VII. FACT DEPOSITIONS

- A. Attendance and Scheduling: All parties may attend any deposition noticed in this action. Parties must provide reasonable notice of the number and identity of attendees prior to each scheduled deposition. The parties shall consult periodically in a good-faith effort to agree in advance upon a mutually acceptable schedule of depositions for each upcoming calendar quarter. Subject to the foregoing, parties will make best efforts to provide deposition notices at least 14 days’ in advance of any deposition. Within 10 days of service of any party deposition notice, the noticed party must notify all other parties that the noticed deposition date is acceptable or make reasonable efforts to offer an alternative

date within 30 days of the noticed date. Parties noticing a deposition must make reasonable efforts to choose a date for the deposition that is convenient for the witness and, when possible, all attending parties.

- B. Time: Except for the depositions described in paragraph VII(C) below, depositions will proceed for no more than 7 hours of on-the-record time. Any party who noticed the deposition of a party witness (including Plaintiffs collectively or Defendants collectively) is entitled to question the witness for 6 of the 7 hours of on-the-record time, or an equivalent portion of any deposition scheduled to last more or less than 7 hours on the-record. During the time remaining after the noticing party or parties have finished their examination, any other parties attending the deposition (including the party defending the deposition, or, if none, the witness's counsel) may question the witness, with a reasonable division of this time to be determined among them. With respect to non-party depositions, the presumption shall be that the noticing party or parties will be entitled to 5 of the 7 hours unless a cross-notice has been served, in which event the presumption is that the time will be split evenly between Plaintiffs collectively and Defendants collectively, subject to further agreement of the parties or order of the Court. Allotted time that is unused by the party entitled to it may be used by any other party at the deposition, not to exceed the 7-hour or other-agreed limitation on the total time of the deposition. For non-party depositions noticed by Plaintiffs collectively or Defendants collectively, the member parties of the noticing group must meet and confer to determine how the allotted time for the deposition will be used among them.

- C. Over-Length Depositions: Depositions may proceed for longer than 7 hours of on-the-record time when (i) an agreement for a longer duration is reached between the party taking the deposition and the party defending the deposition (or, if the witness is not represented by any party, the witness's counsel), in light of all parties' recognition that some depositions may reasonably require more than one day and their agreement to negotiate such extensions of deposition time in good faith; or (ii) permitted by order of the Court. The parties further recognize that depositions related to Citadel LLC (f/k/a Citadel Investment Group, LLC), CME Group, and CMDX may reasonably require more than one day and agree to confer with each other and with counsel for those entities on appropriate time limitations and divisions for depositions for those entities.
- D. Questioning and Objections: An objection or motion to strike made by any party at a deposition will be preserved for all other parties and need not be explicitly joined.
- E. Deposition Logistics and Costs: The first party to notice the deposition will be responsible for arranging for the deposition space, court reporter, and (if necessary) videographer. Each party is responsible for ordering and paying for its own copies of the transcripts or video from the court reporter or videographer, unless the parties agree to share these costs.
- F. 30(b)(6) Depositions: A party served with a notice for deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) may designate one person to testify on more than one noticed topic, or may designate more than one witness to testify on a single noticed topic. To the extent possible, a party served with a notice for

deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) shall disclose the identity of the witness or witnesses to testify at the deposition at least one week prior to the scheduled date for the deposition.

- G. Additional Depositions: Any witness appearing on a party's trial witness list who has not previously been deposed in the actions may be deposed prior to trial (or, if the parties agree, during trial).

VIII. EXPERTS

- A. The parties will make all disclosures required by Federal Rule of Civil Procedure 26(a)(2), as modified or limited herein, at the times and in the manner provided below. The term "expert" as used herein refers to a witness a party may use to present evidence under Federal Rule of Evidence 702, 703, or 705.
- B. Expert Reports and Summaries: On the dates provided in the case schedule, Plaintiffs must serve their opening expert reports, Defendants must then serve their expert reports, and Plaintiffs must then serve their reply reports. The expert reports shall comply with Federal Rule of Civil Procedure 26(a)(2)(B), provided, however, that the term "considered" as used in Federal Rule of Civil Procedure 26(a)(2)(B)(ii) and 26(b)(4)(C)(ii) shall be interpreted as "relied upon" for purposes of this section.
- C. Associated Documents and Data: Within 5 business days of service of any expert report, the serving party must produce to all other parties a copy of all documents or data referred to therein, except for any documents or data that have been produced previously in the actions, which can instead be referred to by Bates number. To the extent the disclosures in an expert report include, rely upon, or describe exhibits, information, or data processed or modeled by a computer at the

direction of an expert in the course of forming the expert's opinions, the party offering the expert's opinions must produce machine-readable copies of the data along with the appropriate programs, software, and instructions, except that no party need produce programs, software, or instructions that are commercially available at a reasonable cost. No party need produce databases, programs, and software that (i) are used in the ordinary course of a party's business and (ii) are not practicable to copy, as long as the party offering the expert's opinion provides timely and reasonable access for purposes of replication or analysis of disclosed results.

- D. Expert Discovery Limitations: The provisions of Federal Rule of Civil Procedure 26(b)(4)(C), as modified or limited herein, will apply to expert discovery in the actions. No expert or party is required to produce or describe on a privilege log and no party may seek discovery of by any method (including by deposition):
- (i) any communication between an expert (including his or her assistants, employees, or agents) and a party offering the testimony of such expert or a co-party thereof (including that party's employees, agents, consultants, and counsel, and their employees or agents); (ii) any communication between an expert and his or her employees, assistants, or agents; (iii) drafts of any report, exhibit, study, work paper, computation, calculation, compilation, or any other material prepared by, for, or at the direction of an expert, regardless of the form in which the draft is recorded; or (iv) any notes or other writings made by, for, or at the direction of an expert. Nothing in this paragraph relieves an expert or party from the duty to

identify the facts, data, and assumptions that the expert relied upon in forming his or her opinions.

- E. Depositions: The parties have not waived expert depositions. Nothing in this Joint Report is intended to waive the ability to request multiple depositions of any experts who submit more than one report.

IX. DISPUTES & MOTIONS

- A. Future Discovery Disputes: If discovery disputes arise between the parties, the parties must follow the procedures for seeking resolution of such disputes set forth in this Court's Individual Practices in Civil Cases at section 2(C).
- B. Non-Discovery Motions: Section 3(A) of this Court's Individual Practices in Civil Cases (which dispenses with the pre-motion conference requirement for all motions except discovery motions), and not section III(A) of the Pilot Project Standing Order, governs non-discovery motion practice in this action. Otherwise, section III of the Pilot Project Standing Order governs non-discovery motion practice in this action.

X. SCHEDULE

The parties propose the following schedule for this litigation, which they believe will lead to an efficient resolution of this action. (Unless otherwise noted, the times indicated below are after entry of the Rule 16 Order.)

Joint Initial Report, Proposed Protective Order, and Stipulation and Proposed Order Regarding Production of Discovery Material filed	
Rule 16 Order entered by Court	
Initial Disclosures served	21 days
Answers to Second Consolidated Amended Class Action Complaint	45 days
Deadline for Substantial Completion of Document Production	7 months after service of request for

	production
Deadline for completion of fact discovery	16 months
Opening class certification brief served	16 months
Plaintiffs' opening merits expert reports served	45 days after class certification briefing completed
Defendants' merits expert reports served	60 days after Plaintiffs' opening reports
Plaintiffs' reply merits expert reports served	60 days after Defendants' reports
Deadline for completion of expert depositions	30 days after completion of expert reports
Summary judgment motions filed	not later than 45 days after the deadline for completion of expert depositions
Summary judgment oppositions filed	60 days after motions filed
Summary judgment replies filed	60 days after oppositions filed
Trial Date	

Following the filing of the opening class certification brief, the parties will meet and confer about the schedule for responsive briefing. To the extent any dates in the schedule are affected by any Court-ordered stay or extensions thereof, the parties will meet and confer to determine reasonable alternative dates applicable to any parties included under the stay, as necessary, and, if necessary, seek approval of the Court.

XI. BIFURCATION AND MINI-TRIALS

The parties do not believe at this time that there are issues as to which bifurcation or a mini-trial would be helpful.

XII. ADR/MEDIATION

The parties are open to the potential resolution of this matter through mediation, and will meet and confer regarding the selection of a mediator and the timing of any such mediation.

XIII. TRIAL

- A. Magistrate Trial: The parties do not consent to trial by magistrate.
- B. Pretrial Order: The parties do not consent to waive the pretrial order. At the completion of summary judgment, however, the parties will confer with each other and the Court regarding the need for, and items to be included in, the pretrial order.

Respectfully submitted,

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So ordered.

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